

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

STEVEN G. MILLETT,
MELODY J. MILLETT,
On Behalf of Themselves and
All Others Similarly Situated,

Plaintiffs,

V.

TRANS UNION L.L.C.,

Defendant.

~~~~~

Cause of Action No. 04-2448-GTV

**DEFENDANT TRANS UNION LLC'S ORIGINAL ANSWER**

COMES NOW, Trans Union LLC (“Trans Union”), Defendant herein, and files its Original Answer, subject to its Motion to Dismiss. The section and paragraph numbers below correspond to the section and paragraph numbers in the Plaintiffs’ Complaint (“Complaint”).

## 1. PARTIES

1. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 1 of the Complaint, and therefore denies the same.

2. Trans Union admits it is a Delaware limited liability company, is authorized to and is doing business in Kansas, and is a consumer reporting agency as defined by the Fair Credit Reporting Act (“FCRA”). Trans Union denies the remainder of the allegations contained in paragraph 2 of the Complaint.

## **2. JURISDICTION AND VENUE**

3. Trans Union admits that Plaintiffs have brought this action on behalf of themselves. Trans Union denies the remainder of the allegations contained in paragraph 3 of the Complaint.

4. Trans Union admits that the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 over at least one claim asserted in this matter. Trans Union admits that Plaintiffs purport to assert claims pursuant to the common law of the State of Kansas for breach of contract. Trans Union denies the remainder of the allegations contained in paragraph 4 of the Complaint.

5. Trans Union admits that the Court has supplemental jurisdiction over Plaintiffs' state law claims. Trans Union denies the remainder of the allegations contained in paragraph 5 of the Complaint.

6. Trans Union admits that the Court has supplemental jurisdiction over Plaintiffs' state law claims. Trans Union denies the remainder of the allegations contained in paragraph 6 of the Complaint.

7. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 7 of the Complaint, and therefore denies the same.

8. Trans Union admits that there is diversity of citizenship between the named Plaintiffs and Defendant. Trans Union is without sufficient information or knowledge to admit or deny the remainder of the allegations contained in paragraph 8 of the Complaint, and therefore denies the same.

**3. OPT-IN CLASS ACTION – CLASS ONE – FCRA**

9. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

10. Trans Union admits that Plaintiffs purport to bring this action as a class action. Trans Union denies the remainder of the allegations contained in paragraph 10 of the Complaint.

11. Trans Union denies the allegations contained in paragraph 11 of the Complaint.

**4. OPT-IN CLASS ACTION – CLASS TWO – BREACH OF CONTRACT**

12. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

13. Trans Union admits that Plaintiffs purport to bring this action as a class action. Trans Union denies the remainder of the allegations contained in paragraph 13 of the Complaint.

14. Trans Union denies the allegations contained in paragraph 14 of the Complaint.

**5. CLASS ACTION ALLEGATIONS – CLASS ONE FCRA**

15. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

16. Trans Union admits that Plaintiffs have brought his action on behalf of themselves. Trans Union denies the remainder of the allegations contained in paragraph 16 of the Complaint.

17. Trans Union denies the allegations contained in paragraph 17 of the Complaint.

18. Trans Union denies the allegations contained in paragraph 18 of the Complaint.

19. Trans Union denies the allegations contained in paragraph 19 of the Complaint.

20. Trans Union denies the allegations contained in paragraph 20 of the Complaint.

21. Trans Union denies the allegations contained in paragraph 21 of the Complaint.

22. Trans Union denies the allegations contained in paragraph 22 of the Complaint.

23. Trans Union denies the allegations contained in paragraph 23 of the Complaint.

24. Trans Union denies the allegations contained in paragraph 24 of the Complaint.

**6. CLASS ACTION ALLEGATIONS – CLASS TWO –  
COMMON LAW BREACH OF CONTRACT**

25. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

26. Trans Union admits that Plaintiffs are attempting to assert this action as a class action under Federal Rule of Civil Procedure 23. Trans Union denies the remainder of the allegations contained in paragraph 26 of the Complaint.

27. Trans Union denies the allegations contained in paragraph 27 of the Complaint.

28. Trans Union denies the allegations contained in paragraph 28 of the Complaint.

29. Trans Union denies the allegations contained in paragraph 29 of the Complaint.

30. Trans Union denies the allegations contained in paragraph 30 of the Complaint.

31. Trans Union denies the allegations contained in paragraph 31 of the Complaint.

32. Trans Union denies the allegations contained in paragraph 32 of the Complaint.

33. Trans Union denies the allegations contained in paragraph 33 of the Complaint.

34. Trans Union denies the allegations contained in paragraph 34 of the Complaint.

35. Trans Union denies the allegations contained in paragraph 35 of the Complaint.

36. Trans Union denies the allegations contained in paragraph 36 of the Complaint.

#### **7. GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

37. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

38. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 38 of the Complaint, and therefore denies the same.

39. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 39 of the Complaint, and therefore denies the same.

40. Trans Union admits that, in certain circumstances, it charges fees and receives funds from the sale of consumer reports and credit scoring. Trans Union denies the remainder of the allegations contained in paragraph 40 of the Complaint.

41. Trans Union denies the allegations contained in paragraph 41 of the Complaint.

42. Trans Union denies the allegations contained in paragraph 42 of the Complaint.

43. Trans Union denies the allegations contained in paragraph 43 of the Complaint.

44. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 44 of the Complaint, and therefore denies the same.

45. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 45 of the Complaint, and therefore denies the same.

46. Trans Union denies the allegations contained in paragraph 46 of the Complaint.

47. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 47 of the Complaint, and therefore denies the same.

48. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 48 of the Complaint, and therefore denies the same.

49. Trans Union denies the allegations contained in paragraph 49 of the Complaint.

50. Trans Union denies that it knew another individual was using Plaintiff Steven Millett's Social Security number. Trans Union is without sufficient information or knowledge to admit or deny the remaining allegations contained in paragraph 50 of the Complaint, and therefore denies the same.

51. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 51 of the Complaint, and therefore denies the same.

52. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 52 of the Complaint, and therefore denies the same.

53. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 53 of the Complaint, and therefore denies the same.

54. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 54 of the Complaint, and therefore denies the same.

55. Trans Union admits that Plaintiffs contacted Trans Union regarding their credit files. Trans Union is without sufficient information or knowledge to admit or deny the remaining allegations contained in paragraph 55 of the Complaint, and therefore denies the same.

56. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 56 of the Complaint, and therefore denies the same.

57. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 57 of the Complaint, and therefore denies the same.

58. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 58 of the Complaint, and therefore denies the same.

59. Trans Union denies the allegations contained in paragraph 59 of the Complaint.

60. Trans Union denies the allegations contained in paragraph 60 of the Complaint.

61. Trans Union denies the allegations contained in paragraph 61 of the Complaint.



62. Trans Union denies the allegations contained in paragraph 62 of the Complaint.

63. Trans Union denies the allegations contained in paragraph 63 of the Complaint.

64. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 64 of the Complaint, and therefore denies the same.

65. Trans Union denies the allegations contained in paragraph 65 of the Complaint.

66. Trans Union admits that, for certain individuals, it has suppressed files as required or permitted by law. Trans Union denies the remainder of the allegations contained in paragraph 66 of the Complaint.

67. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 67 of the Complaint, and therefore denies the same.

68. Trans Union denies the allegations contained in paragraph 68 of the Complaint.

69. Trans Union denies the allegations contained in paragraph 69 of the Complaint.

70. Trans Union denies the allegations contained in paragraph 70 of the Complaint.

71. Trans Union denies the allegations contained in paragraph 71 of the Complaint.

72. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 72 of the Complaint, and therefore denies the same.

73. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 73 of the Complaint, and therefore denies the same.

74. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 74 of the Complaint, and therefore denies the same.

75. Trans Union denies the allegations contained in paragraph 75 of the Complaint.

76. Trans Union denies the allegations contained in paragraph 76 of the Complaint.

77. Trans Union denies the allegations contained in paragraph 77 of the Complaint.

78. Trans Union denies the allegations contained in paragraph 78 of the Complaint.

79. Trans Union denies the allegations contained in paragraph 79 of the Complaint.

80. Trans Union denies the allegations contained in paragraph 80 of the Complaint.

81. Trans Union denies the allegations contained in paragraph 81 of the Complaint.

82. Trans Union denies the allegations contained in paragraph 82 of the Complaint.

83. Trans Union admits that fraud alerts placed on Plaintiffs' credit files do not appear on the files of any alleged fraud perpetrators. Trans Union denies the remainder of the allegations contained in paragraph 83 of the Complaint.

84. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 84 as they relate to criminal charges initiated against third parties, and therefore denies the same. Trans Union denies the remainder of the allegations contained in paragraph 84 of the Complaint.

85. Trans Union denies the allegations contained in paragraph 85 of the Complaint.

86. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 86 of the Complaint, and therefore denies the same.

87. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 87 of the Complaint, and therefore denies the same.

88. Trans Union denies the allegations contained in paragraph 88 of the Complaint.

89. Trans Union denies the allegations contained in paragraph 89 of the Complaint.

90. Trans Union denies the allegations contained in paragraph 90 of the Complaint.

91. Trans Union is without sufficient knowledge to admit or deny the allegation contained in paragraph 91 as they related to Equifax and Experian, and therefore denies the same. Trans Union denies the remainder of the allegations contained in paragraph 91 of the Complaint.

92. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 92 of the Complaint, and therefore denies the same.

93. Trans Union denies the allegations contained in paragraph 93 of the Complaint.

94. Trans Union denies the allegations contained in paragraph 94 of the Complaint.

95. Trans Union denies the allegations contained in paragraph 95 of the Complaint.

96. Trans Union admits that it in connection with its ordinary business activities it charges fees and receives funds for the providing of credit reports, analyzing credit information, and providing other products and services. Trans Union denies the remainder of the allegations contained in paragraph 96 of the Complaint.

97. Trans Union denies the allegations contained in paragraph 97 of the Complaint.

98. Trans Union denies the allegations contained in paragraph 98 of the Complaint.

99. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 99 of the Complaint, and therefore denies the same.

100. Trans Union admits the allegations contained in paragraph 100 of the Complaint.

101. Trans Union denies the allegations contained in paragraph 101 of the Complaint.

102. Trans Union denies the allegations contained in paragraph 102 of the Complaint.

103. Trans Union denies the allegations contained in paragraph 103 of the Complaint.

104. Trans Union denies the allegations contained in paragraph 104 of the Complaint.

105. Trans Union denies the allegations contained in paragraph 105 of the Complaint.

106. Trans Union denies the allegations contained in paragraph 106 of the Complaint.

107. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 107 of the Complaint, and therefore denies the same.

108. To the extent that the allegations contained in paragraph 108 relate to Trans Union, Trans Union denies them. Trans Union is without sufficient information or

knowledge to admit or deny the remainder of the allegations contained in paragraph 108 of the Complaint, and therefore denies the same.

109. Trans Union denies the allegations contained in paragraph 109 of the Complaint.

110. Trans Union denies the allegations contained in paragraph 110 of the Complaint.

111. Trans Union denies the allegations contained in paragraph 111 of the Complaint.

112. Trans Union admits that, subject to the permissible purpose requirements of the FCRA, it sells products that allow subscribers to verify a Social Security number and the individual most likely to be the authorized user of a Social Security number. Trans Union denies the remainder of the allegations contained in paragraph 12 of the Complaint.

## **8. COUNTS**

### **COUNT 1 – WILLFUL VIOLATION OF FAIR CREDIT REPORTING ACT, 15 U.S.C. §1681 et seq. – CLASS ACTION**

113. Trans Union admits that Plaintiffs have brought his action on behalf of themselves. Trans Union denies the remainder of the allegations contained in paragraph 113 of the Complaint.

114. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

115. Trans Union admits that Plaintiffs submitted disputes to Trans Union. Trans Union denies the remainder of the allegations contained in paragraph 115 of the Complaint

116. Trans Union denies the allegations contained in paragraph 116 of the Complaint.

117. Trans Union denies the allegations contained in paragraph 117 of the Complaint.

118. Trans Union denies the allegations contained in paragraph 118 of the Complaint.

119. Trans Union denies the allegations contained in paragraph 119 of the Complaint.

120. Trans Union denies the allegations contained in paragraph 120 of the Complaint.

121. Trans Union denies the allegations contained in paragraph 121 of the Complaint.

122. Trans Union denies the allegations contained in paragraph 122 of the Complaint.

123. Trans Union denies the allegations contained in paragraph 123 of the Complaint.

124. Trans Union denies the allegations contained in paragraph 124 of the Complaint.

Trans Union denies the requests for relief contained in the prayer in this section of Plaintiffs' Complaint.

**COUNT II - NEGLIGENT VIOLATION OF FAIR CREDIT REPORTING ACT,  
15 U.S.C. § 1681 et seq. – CLASS ACTION**

125. Trans Union admits that Plaintiffs have brought his action on behalf of themselves. Trans Union denies the remainder of the allegations contained in paragraph 125 of the Complaint.

126. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

127. Trans Union denies the allegations contained in paragraph 127 of the Complaint.

128. Trans Union denies the allegations contained in paragraph 128 of the Complaint.

129. Trans Union denies the allegations contained in paragraph 129 of the Complaint.

Trans Union denies the requests for relief contained in the prayer in this section of Plaintiffs' Complaint.

**COUNT III – BREACH OF CONTRACT – CLASS ACTION**

130. Trans Union admits that Plaintiffs have brought his action on behalf of themselves. Trans Union denies the remainder of the allegations contained in paragraph 130 of the Complaint.

131. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

132. Trans Union denies the allegations contained in paragraph 132 of the Complaint.



133. Trans Union denies the allegations contained in paragraph 133 of the Complaint.

134. Trans Union denies the allegations contained in paragraph 134 of the Complaint.

135. Trans Union denies the allegations contained in paragraph 135 of the Complaint.

136. Trans Union denies the allegations contained in paragraph 136 of the Complaint.

Trans Union denies the requests for relief contained in the prayer in this section of Plaintiffs' Complaint.

**COUNT IV – NEGLIGENCE – PLAINTIFF STEVEN MILLETT**

137. Trans Union denies the allegations contained in paragraph 137 of the Complaint.

138. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

139. Trans Union admits that the Fair Credit Reporting Act imposes certain legal obligations on Trans Union. Trans Union denies the remainder of the allegations asserted in paragraph 139.

140. Trans Union denies the allegations contained in paragraph 140 of the Complaint.

141. Trans Union denies the allegations contained in paragraph 141 of the Complaint.

142. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 142 of the Complaint, and therefore denies the same.

143. Trans Union is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 143 of the Complaint, and therefore denies the same.

144. Trans Union denies the allegations contained in paragraph 144 of the Complaint.

145. Trans Union denies the allegations contained in paragraph 145 of the Complaint.

146. Trans Union denies the allegations contained in paragraph 146 of the Complaint.

Trans Union denies the requests for relief contained in the prayer in this section of Plaintiffs' Complaint.

#### **COUNT V – KANSAS CONSUMER PROTECTION ACT**

147. Trans Union denies the allegations contained in paragraph 147 of the Complaint.

148. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

149. Trans Union denies the allegations contained in paragraph 149 of the Complaint.

150. Trans Union denies the allegations contained in paragraph 150 of the Complaint.

151. Trans Union denies the allegations contained in paragraph 151 of the Complaint.

152. Trans Union denies the allegations contained in paragraph 152 of the Complaint.

153. Trans Union denies the allegations contained in paragraph 153 of the Complaint.

154. Trans Union denies the allegations contained in paragraph 154 of the Complaint.

155. Trans Union denies the allegations contained in paragraph 155 of the Complaint.

156. Trans Union denies the allegations contained in paragraph 156 of the Complaint.

Trans Union denies the requests for relief contained in the prayer in this section of Plaintiffs' Complaint.

#### **COUNT VI - FRAUD**

157. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b) Trans Union is unable to either admit or deny the allegations contained in paragraph 157 of the Complaint.

158. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b) Trans Union is unable to either admit or deny the allegations contained in paragraph 158 of the Complaint.

159. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b) Trans Union is unable to either admit or deny the allegations contained in paragraph 159 of the Complaint.

160. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 160 of the Complaint.

161. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 161 of the Complaint.

162. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 162 of the Complaint.

163. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 163 of the Complaint.

164. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 164 of the Complaint.

165. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 165 of the Complaint.

166. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 166 of the Complaint.

167. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 167 of the Complaint.

168. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 168 of the Complaint.

169. Pursuant to the Motion to Dismiss filed by Defendant, because of Plaintiffs' failure to comply with Rule 9(b), Trans Union is unable to either admit or deny the allegations contained in paragraph 169 of the Complaint.

Trans Union denies the requests for relief contained in the prayer in this section of Plaintiffs' Complaint.

#### **COUNT VII – NEGLIGENT MISREPRESENTATION**

170. Trans Union denies the allegations contained in paragraph 170 of the Complaint.

171. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

172. Trans Union denies the allegations contained in paragraph 172 of the Complaint.

173. Trans Union denies the allegations contained in paragraph 173 of the Complaint.

174. Trans Union denies the allegations contained in paragraph 174 of the Complaint.

175. Trans Union denies the allegations contained in paragraph 175 of the Complaint.

176. Trans Union denies the allegations contained in paragraph 176 of the Complaint.

177. Trans Union denies the allegations contained in paragraph 177 of the Complaint.

178. Trans Union denies the allegations contained in paragraph 178 of the Complaint.

179. Trans Union denies the allegations contained in paragraph 179 of the Complaint.

Trans Union denies the requests for relief contained in the prayer in this section of Plaintiffs' Complaint.

#### **COUNT XIII – INJUNCTIVE RELIEF**

180. Trans Union incorporates its answers and responses to the preceding paragraphs of the Complaint as though fully set forth in this paragraph.

181. Trans Union denies the allegations contained in paragraph 181 of the Complaint.

182. Trans Union denies the allegations contained in paragraph 182 of the Complaint.

Trans Union denies the requests for relief contained in the prayer in this section of Plaintiffs' Complaint.

**AFFIRMATIVE DEFENSES**

183. Plaintiffs have failed to state a claim against Trans Union upon which relief can be granted.

184. At all relevant times, Trans Union maintained and followed reasonable procedures to avoid violations of the Fair Credit Reporting Act and assure maximum possible accuracy of the information concerning Plaintiffs in preparing consumer reports related to Plaintiffs. Such reasonable procedures extended to the investigation and resolution of any disputed information contained in such reports.

185. Trans Union alleges that any damages to Plaintiffs were caused in whole or in part by intervening or superceding causes.

186. Trans Union at all times acted in compliance with the Fair Credit Reporting Act.

187. Trans Union has not published any false, inaccurate, or defamatory information to any third party regarding Plaintiffs and has not acted with negligence, malice, or willful intent to injure.

188. Plaintiffs failed to mitigate their alleged damages.

189. Plaintiffs' common law and/or state law claims are barred/preempted by the Fair Credit Reporting Act.

190. At all times, Trans Union acted under a qualified privilege provided in the Fair Credit Reporting Act and the common law.

191. Plaintiffs' claims for exemplary or punitive damages violate the Fourteenth Amendment, the excessive fines clause of the Eighth Amendment, and the Due Process Clause of the United States Constitution and the Kansas Constitution.

192. Trans Union, in compliance with the Fair Credit Reporting Act, reasonably and completely reinvestigated and verified, updated, or removed all information disputed by Plaintiffs.

193. To the extent Trans Union may be found liable on all or a portion of Plaintiffs' liability claims, Trans Union would show that Plaintiffs actions or inactions constituted contributory negligence.

194. Trans Union affirmatively pleads that it is entitled to attorney's fees in the event that the Court determines that the Plaintiffs have filed an unsuccessful pleading, motion, or other paper in connection with this action under § 1681n or o of the FCRA in bad faith or for purposes of harassment.

195. In the event that a settlement is reached between Plaintiffs and any other person or entity, Trans Union is entitled to any settlement credits permitted by law.

196. Trans Union is not liable in the capacity in which is has been sued.

197. If Plaintiffs sustained any damages, which is specifically denied, such damages were caused in whole or in part or contributed to by the acts, omissions, negligence or causal fault of Plaintiffs or other persons or entities for whom Trans Union is not responsible, and were not due to or caused by any fault, lack of care, negligence or breach of duty by Trans Union. If it is determined that fault was caused in whole or in part, or contributed to, by the acts, omissions, negligence or causal fault of Plaintiffs or other persons or entities for whom Trans Union is not responsible, and such fault does not act as a complete bar to Plaintiffs' claims against Trans Union, then Trans Union is entitled to an apportionment of all such causal fault and proportionate reduction of any award against it pursuant to K.S.A. § 60-258(a). Trans Union specifically denies any



causal fault or negligence on its part and further denies that its conduct had any causal connection with Plaintiffs' alleged damages.

198. Plaintiffs' claims are barred or otherwise limited by the doctrines of waiver, estoppel and laches.

199. Plaintiffs' claims are barred by the statutes of limitations applicable to each count, including but not limited K.S.A. § 60-512, K.S.A. § 60-513 and K.S.A. § 60-514.

200. Plaintiffs have failed to plead their claim for alleged violation of the Kansas Consumer Protection Act, K.S.A. 50-623, et seq. with particularity as required by *Burton v. R.J. Reynolds Tobacco Co.*, 884 F.Supp. 1515 (D.Kan. 1995).

201. Plaintiffs have failed to plead their claims for alleged fraud and misrepresentation with particularity as required by FRCP 9 and K.S.A. § 60-209.

202. Trans Union would show that it did not make any false representations to Plaintiffs regarding the subject matter of Plaintiffs' claims.

203. Plaintiffs did not justifiably rely to their detriment on any purportedly false representations by Trans Union.

204. Trans Union would show that Plaintiffs' proposed "Opt-In Class One" constitutes an impermissible "fail-safe" class.

WHEREFORE, PREMISES CONSIDERED, Defendant Trans Union LLC respectfully requests that this Court deny certification of the classes requested by Plaintiffs, deny all relief requested in Plaintiffs' Complaint, award Trans Union its costs of suit and expenses incurred herein (including its attorneys' fees), and grant such other and further relief to which Trans Union may show itself to be justly entitled.

Respectfully submitted,

/s/James S. Kreamer  
\_\_\_\_\_  
JAMES S. KREAMER  
KS # 14374  
ELIZABETH RAINES  
KS # 20668

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2004, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Mr. Barry R. Grissom (*via U.S. Mail*)  
Attorney at Law  
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***Counsel for Plaintiffs***

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Overland Park, Kansas 66212  
***Counsel for Plaintiffs***

/s/James S. Kreamer  
\_\_\_\_\_  
JAMES S. KREAMER